

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ANDRE NATHANIEL JACKSON,

Plaintiff,

v.

Case No. 23-C-1156

JA CORAL KOPP, et al.,

Defendants.

DECISION AND ORDER

Plaintiff Andre Nathaniel Jackson is representing himself in this 42 U.S.C. §1983 case. On August 30, 2023, he filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 2. The Prison Litigation Reform Act (PLRA) applies to this case because Jackson was incarcerated when he filed his complaint. The PLRA gives courts discretion to allow a plaintiff to proceed with his lawsuit without prepaying the \$350 civil case filing fee as long as he complies with certain requirements. 28 U.S.C. § 1915. One of those requirements is that he pay an initial partial filing fee.

On September 7, 2023, the Court ordered Jackson to forward to the Clerk of Court \$12.14 as an initial partial filing fee. Jackson was advised that, upon payment of this partial filing fee, the Court would screen his complaint to identify cognizable claims. On September 14, 2023, Jackson filed a motion for reconsideration. Dkt. No. 7. He states that he has less than a dollar in his account, and he is not sure when he will receive more funds. He asserts that his mother sends him money when she can. He explains that he does not have a job at the jail, so he has no way to pay

the initial partial filing fee or the full filing fee. He asks the Court to waive his obligation to pay the initial partial filing fee.

A court may not dismiss the lawsuit of a prisoner who lacks the ability to pay an initial partial filing fee. *See* 28 U.S.C. §1915(b)(4) (“In no event shall a prisoner be prohibited from bringing a civil action . . . for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.”). “But if the court finds that the prisoner is unable to pay the partial filing fee at the time of collection because he intentionally depleted his account to avoid payment, the court in its sound discretion may dismiss the action.” *Thomas v. Butts*, 745 F.3d 309, 312 (7th Cir. 2014) (citations and internal punctuation omitted).

Jackson filed his complaint on August 30, 2023. The trust account statement he submitted covers the time period of March 21 through August 23, 2023. The Court’s review of the statement reveals that, during that time, payments totaling \$438.20 were deposited into Jackson’s account. The most recent deposit (\$36.00) was made on August 22, 2023, just a week before Jackson filed his complaint. From what the Court can tell, it appears that Jackson spent the majority of his money at the commissary.

The Seventh Circuit has instructed, “It is not enough that the prisoner lack assets on the date he files. If that were so, then a prisoner could squander his trust account and avoid the fee. Section 1915(b)(4) comes into play only when ‘the prisoner has no assets and no means by which to pay the initial partial filing fee.’ A prisoner with periodic income has ‘means’ even when he lacks ‘assets.’” *Newlin v. Helman*, 123 F.3d 429, 435 (7th Cir. 1997) (*rev’d on other grounds Walker v. O’Brien*, 216 F.3d 626 (7th Cir. 2000)).

Jackson chose to spend his limited income at the commissary, so, while he may now be without assets (because he spent his money), he is not without means (because he regularly

receives deposits into his account). Jackson bears the consequence for spending his money rather than saving some of it to pay an initial partial filing fee. Accordingly, the Court will deny Jackson's motion for reconsideration and to waive his obligation to pay a \$12.14 initial partial filing fee. The Court will, however, extend the deadline by which he must pay the fee to **October 30, 2023**.

IT IS THEREFORE ORDERED that Jackson's motion for reconsideration (Dkt. No. 7) is **DENIED**. If the Court does not receive the \$12.14 initial partial filing fee or an explanation of why the fee cannot be paid by **October 30, 2023**, the Court will deny Jackson's motion to proceed without prepaying the filing fee and will dismiss this action based on his failure to pay the filing fee.

Dated at Green Bay, Wisconsin this 18th day of September, 2023.

s/ William C. Griesbach

William C. Griesbach
United States District Judge